



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE *108th* CONGRESS, FIRST SESSION

WASHINGTON, TUESDAY OCTOBER 21, 2003

Senate

Class Action Fairness Act 2003

Mr. CARPER. Madam President, before the Senator leaves the floor, I have observed that she has been diligent in continuing to focus on health care issues, including our need to somehow effect and moderate the growing cost of health care in this country. She has seen an exodus of manufacturers out of her State and millions of manufacturing jobs from the United States. Among the reasons why they are leaving is the extraordinary cost of health care. Companies also tell us they are considering other places to locate and do business because of litigation costs, legal costs that flow out of the costs of doing business in our country. Those costs could deal with asbestos litigation, which has taken down now over 60 companies that have gone bankrupt.

Unfortunately, a lot of people who have been hurt or exposed to asbestos haven't gotten the kind of money their families deserve, and people who haven't been sick have taken away money from those who need it.

Another area with respect to legal costs that will get a lot of attention on this floor this week is the cost of class action litigation and whether or not the way our class action system works in this country is appropriate or needs to be changed.

Let me say from the outset that I think when a person is hurt or damaged in some way by the acts of another person or a company, that person should be compensated. They should be made whole. When a number of people, or a class of people, are hurt or damaged in some way by the actions of a company or business, that class of people should be compensated and made whole as well.

I submit to my colleagues today that our sense of balance, though, has been lost. We are seeing national class action litigation not taking place in Federal courts but in many instances taking place in local courts with locally elected judges against defendants from other States.

When the Framers of our Constitution provided for a Federal judiciary, one of the reasons they did so was to say when you have plaintiffs in one State and you have defendants in another State, just to make sure there is an objective legal system, we need a Federal judiciary to help provide for that leveling of the playing field.

All too often today national class action litigation pits plaintiffs in one State and defendants in another State in a local court where you have a locally elected judge whose election or reelection depends in no small part on their ability to satisfy the

plaintiffs within their State. We've just lost our sense of balance.

There have been efforts for five years now to try to make changes with respect to class action litigation. It started out far different than where it has ended up. The current bill is much more moderate than those that came before it. Also, there is no effort with this bill to cap noneconomic or attorneys' fees. There is no effort to limit joint and several liability.

I want to talk about the bill that will come to the Senate floor if we agree to the motion to proceed tomorrow.

First of all, the legislation that will come to us is not perfect. It might need to be amended or changed further. It is certainly not the final product, but it is a good starting point. If we agree to the motion to proceed tomorrow—it takes 60 votes—we will have the opportunity for those of us on our side, the Democratic side, and the Republican side, to offer amendments, to have a full and open debate and decide whether or not we are going to change the bill. It can be improved, and I certainly will support amendments. I may talk about those later today or tomorrow.

Let me take a minute to describe the legislation that may come to the floor. The issue we are trying to get at is venue shopping, where you have, in some cases, litigation that is being brought and litigation of national scope that ought to be in a Federal court, where the attorneys who brought the lawsuit are looking for a venue where they can get a friendly judge and friendly jury.

In some places, it is almost a cottage industry, whether it is Madison County, IL; Jefferson County, TX; and other places,

such as Alabama and Mississippi. There is a perception that a defendant is not going to get a fair shake in a national class action litigation in those venues.

The PRESIDING OFFICER. The time controlled by the minority for morning business has expired.

Mr. CARPER. I thank the Chair. I will have more to say about this later today.